

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA**

CASE NO.: CVA1 09-60
Lower Court Case No.: 09-SC-9559-O

BRIAN LEJEUNE,
Appellant,

v.

HERNANDO FAJARDO,
Appellee.

_____ /

Appeal from the County Court,
For Orange County,
Deb Sammons Blechman, County Judge.

Frank P. Remsen, Esquire,
for Appellant.

Hernando Fajardo, pro se,
for Appellee.

Before POWELL, STRICKLAND, LEBLANC, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant Brian Lejeune timely appeals from the trial court's final judgment, rendered November 12, 2009, awarding damages in favor of Appellee Hernando Fajardo. The Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). The Court dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

The parties appeared for a pre-trial scheduling conference on Tuesday, September 29, 2009, at which time the trial below was scheduled for Thursday, November 12, 2009, at 1:30 p.m. Sometime on Tuesday, November 10, 2009, Appellant's counsel discovered that the trial

conflicted with a violation of probation hearing he was scheduled to attend in Lake County. The trial court received a faxed motion for continuance from Appellant's counsel the morning of Wednesday, November 11, 2009. The trial court was closed on Wednesday, November 11, 2009, in observance of Veteran's Day. The trial judge's assistant advised counsel that a continuance would be granted if Appellee agreed. Appellee did not agree to a continuance. Counsel, Appellant, and Appellant's witness failed to appear for trial. The trial court proceeded and entered a final judgment after Appellee presented his evidence. This appeal followed.

Appellant's motion for continuance did not show good cause. The issue below was not a case where counsel was stuck in a trial or hearing which carried over to the next day, nor was it a case where counsel was physically or mentally unable to appear. The problem resulted from counsel's inattention to his schedule. The Court further notes that the motion for continuance was not signed by Appellant as required by Florida Rule of Civil Procedure 1.460. The motion does not state that counsel attempted to get the Lake County judge to reset the violation of probation hearing, or, failing that, to get another attorney to cover either this trial or the violation of probation hearing. Moreover, the motion does not describe a meritorious defense necessitating an attorney's appearance, as opposed to Appellant and his witness simply attending the trial and giving their testimony, particularly, since Appellee represented himself pro se in the simple and straight-forward tenant waste claim. *See Maistrosky v. Harvey*, 133 So. 2d 103 (Fla. 2d DCA 1961).

The test is whether there was a clear showing that the denial of the motion for continuance was a palpable abuse of discretion. *Id.* This Court finds that the test has not been met in the instant case.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment, rendered November 12, 2009, is **AFFIRMED**.

DONE and ORDERED at Orlando, Florida this ___28___ day _____ September ____, 2010.

_____/s/_____
ROM W. POWELL
Senior Circuit Judge

_____/s/_____
STAN STRICKLAND
Circuit Judge

_____/s/_____
BOB LEBLANC
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 29 day of September, 2010, to the following: **Frank P. Remsen, Esquire**, 2301 Lucien Way, Suite 323, Maitland, Florida 32751 and **Hernando Fajardo**, 500 Trinity Lane North, Apt. # 11308, St. Petersburg, Florida 33716.

_____/s/_____
Judicial Assistant